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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	
	:	Chapter 11
SEARS HOLDINGS CORPORATION, et al.,	:	
	:	Case No. 18-23538 (RDD)
	:	
Debtors.¹	:	(Jointly Administered)
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**STIPULATION, AGREEMENT, AND ORDER GRANTING
LIMITED RELIEF FROM THE AUTOMATIC STAY
(2078 ROUTE 481, FULTON, NEW YORK 13069)**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

This stipulation, agreement, and order (the “**Stipulation, Agreement, and Order**”) is entered into by and among Kmart Corporation (“**Kmart**”), as debtor and debtor-in-possession in the above captioned chapter 11 cases, and David P. Martin, Esq., solely in his capacity as the receiver (“**Receiver**” and, together with Kmart, the “**Parties**” and each a “**Party**”) appointed in the State Action (defined below). The Parties hereby stipulate and agree as follows:

RECITALS

A. By Memorandum of Lease dated August 21, 1992 and recorded on December 30, 1993 in the Oswego County Clerk’s Office (the “**Clerk’s Office**”) in Book 1237 at Page 341 (the “**Kmart Lease**”), Kmart, as tenant, leased approximately 94,841 square feet (the “**Kmart Portion**”) of the real property located at 2078 Route 481, Fulton, New York 13069 (the “**Leased Premises**”). A copy of the Kmart Lease is annexed hereto as **Exhibit 1**.

B. On May 5, 2016, U.S. Bank National Association, in its capacity as trustee (“**Lender**”) under that certain mortgage encumbering the Leased Premises (the “**Mortgage**”), commenced an action captioned *U.S. Bank National Association, as Trustee, et al. v. CCCF River Glen Holdings, Inc., et al.* under Index No. 0521/2016 (the “**State Action**”) in the Supreme Court of the State of New York, County of Oswego (the “**State Court**”) to foreclose upon the Mortgage in the original principal amount of eight million dollars (\$8,000,000.00).

C. Lender named Kmart as a defendant in the State Action due to its tenancy interest in the Leased Premises vis-à-vis the Kmart Lease.

D. The State Court issued the *Ex Parte Order Appointing Receiver in Commercial Mortgage Foreclosure Action* dated May 18, 2016 and entered in the Clerk’s Office on May 23, 2016 (the “**Receivership Order**”) appointing Receiver as temporary receiver of the

Leased Premises during the pendency of the State Action (a copy of the Receivership Order is annexed hereto as **Exhibit 2**).

E. By motion dated October 12, 2018, Receiver sought entry of an order: (i) approving a Second Interim Accounting; (ii) granting an Interim Commission Payment to Receiver; and (iii) granting an Interim Distribution to Plaintiff (the “**Receiver’s Motion to Approve Second Interim Accounting and Commission**”).

F. On October 15, 2018 (the “**Commencement Date**”) and continuing thereafter, Kmart and its debtor affiliates (collectively, the “**Debtors**”), each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

G. On October 15, 2018, the Debtors filed the *Omnibus Motion of Debtors to Reject Certain Unexpired Leases and Related Subleases of Nonresidential Real Property and Abandonment of Property in Connection Therewith* [Doc. No. 25] (the “**Lease Rejection Motion**”). The Lease Rejection Motion included the Kmart Lease among the unexpired nonresidential real property leases and related subleases that the Debtors sought to reject.

H. On November 19, 2018, the Bankruptcy Court entered the order approving the Lease Rejection Motion [Doc. No. 810] and, among other things, authorizing the Debtors to reject the Kmart Lease and abandon certain personal property in favor of the landlord of the Leased Premises (the “**Lease Rejection Order**”).

I. Kmart has vacated the Kmart Portion of the Leased Premises.

J. Receiver seeks to pursue the Receiver’s Motion to Approve Second Interim Accounting and Commission and to take all necessary steps to terminate the Kmart Lease as authorized in the Receivership Order.

K. Receiver is in the process of winding up his practice and preparing for retirement effective January 31, 2019.

L. Receiver anticipates filing a stipulation to appoint a successor Receiver prior to January 31, 2019 and will seek entry of an order discharging Receiver upon approval of the Receiver's Motion to Approve Second Interim Accounting and Commission.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT HEREBY IS STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THROUGH THE UNDERSIGNED, AND UPON COURT APPROVAL HEREOF, IT IS ORDERED THAT:

1. This Stipulation, Agreement, and Order shall have no force or effect unless and until approved by the Court (the "**Effective Date**").

2. Upon the Effective Date, the automatic stay, in effect pursuant to 11 U.S.C. §362(a), is hereby modified, *nunc pro tunc* as of the Commencement Date, solely to the extent necessary to permit continuation of the State Action as it relates to the Receiver's Motion to Approve Second Interim Accounting and Commission, and to permit (i) continuation of the State Action as it relates to the Receiver's Motion to Approve Second Interim Accounting and Commission, (ii) Receiver to exercise his right to terminate the Kmart Lease as a result of the Lease Rejection Order, (iii) appointment of a successor receiver, and (iv) discharge of the Receiver; provided, however, that all other provisions of the automatic stay, including, without limitation, those provisions prohibiting any act to collect, assess, or recover a claim that arose prior to the Commencement Date from the respective estates and/or assets or property of any of the Debtors (as defined in section 541 of the Bankruptcy Code), shall remain in full force and effect.

3. Receiver reserves his right to file a proof of claim against the Debtors for, *inter alia*, damages arising from Kmart's rejection of the Kmart Lease, and the Debtors reserve all rights and positions with respect to objecting to any such claims.

4. The Parties hereto consent to the entry of this Stipulation, Agreement, and Order.

5. Nothing contained in this Stipulation, Agreement, and Order affects the terms of the Lease Rejection Order, which remains in full force and effect.

6. Each person who executes this Stipulation, Agreement, and Order on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation, Agreement, and Order on behalf of such Party.

7. This Stipulation, Agreement, and Order may be executed simultaneously in one or more counterparts, and by the parties hereto in separate counterparts, and with facsimile or pdf signatures being deemed originals, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

8. The Parties hereby waive the fourteen (14) day stay as set forth in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

9. This Stipulation, Agreement, and Order and all the provisions hereof shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

10. This Stipulation, Agreement, and Order may not be modified, altered, amended, or vacated in any way except by a writing signed by the Parties.

Dated: New York, New York
January 15, 2019

Dated: Syracuse, New York
January 15, 2019

WEIL GOTSHAL & MANGES, LLP

HARRIS BEACH PLLC

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State Court-Appointed Receiver
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SO ORDERED:

Dated: January 23, 2019
White Plains, New York

/s/Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE